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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 191

GERALDINE SNELL, et al.,

Appellants,

against

GEORGE K. WYMAN, as Commissioner, New York State Department of Social Services; MITCHELL GINSBERG, as Commissioner of New York City Department of Social Services,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM BY APPELLEE GEORGE K. WYMAN, AS COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

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MOTION TO DISMISS OR AFFIRM BY APPELLEE GEORGE K. WYMAN, AS COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

Appellee George K. Wyman, as Commissioner of the New York State Department of Social Services, moves pursuant to Rule 16 of the Revised Rules of this Court, that the judgment of the United States District Court for the Southern District of New York be affirmed or, in the alternative, that this appeal be dismissed.

Opinions Below

The endorsement memorandum of the Hon. Marvin E. Frankel, District Judge, granting plaintiffs' motion to convene a three-judge District Court, is not reported. The *opinion of the District Court for the Southern District of* New York is reported at 281 F. Supp. 853. The opinion of the District Court and the dissenting opinion of Judge Kaufman are set forth on pages 14 through 53 of appellants' jurisdictional statement (App. B.).

Jurisdiction

Appellants invoke the jurisdiction of this Court under 28 U.S.C. Section 1253.

Statutes and Regulations Involved

New York Social Welfare Law §§ 104, 104a, 105 and 360 (appellants' appendix D), and Title 18, Sections 368.2 and 369.2, of the Regulations of the New York State Department of Social Services (appellants' appendix D).

Questions Presented

1. Whether the New York State recovery provisions conflict with the Federal Social Security Act, 42 U.S.C. §§ 601 and 1351, and thus violate the Supremacy Clause of Article VI of the United States Constitution?

2. Whether the recovery provisions violate the Equal Protection Clause of the Fourteenth Amendment?

3. Whether the recovery provisions violate the Due Process Clause of the Fourteenth Amendment?

Statement of the Case

New York's recovery statutes require recipients of public assistance who have financial resources to reimburse the State for benefits received. The determination of the Legislature to recover public assistance expenditures from recipients having assets other than earnings is an attempt to fulfill the State's obligations to those in financial need, while utilizing its resources solely on the basis of such need* (Wyman deposition, p. 15; Ginsberg deposition, p. 11).

In enforcing the recovery provisions, there is never under any circumstances an attachment or assignment of salary or earnings, since the definition of property under the statute is interpreted to exclude earnings of any kind, as well as assets acquired from earnings (Wyman deposition, p. 25; Felder deposition, pp. 15-16).

Assignments of assets by recipients are limited to those presently held, or presently assignable; there is no assignment of property to be acquired in the future (Felder deposition, pp. 18-19). Of course, all such assignments are effective only to the extent of public monies disbursed.**

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* *Extra* grants in aid (over and above the basic allowances) cost $10-million to $12-million per month in New York City alone. There, the basic allowance for a family of four is $272.50 a month. The New York Times, July 15, 1968, p. 1, col. 5 (story by Peter Kihss). Recent statistics of the New York City Department of Social Services (as of April, 1968) indicate that there are 841,542 people on the welfare rolls in New York City alone—10.8% of that City's population. The trend is upward. Experts estimate that one or two million persons will join the welfare rolls (nation-wide) in the coming year. *The New York Times,* loc. cit. *supra.*

** Appellants' assertion (jurisdictional statement, p. 4) that maintenance of bank accounts will subject recipients to fraud penalties, and that the State will seek recovery in such situations even from estates otherwise payable to surviving minor children, is mistaken. Only secret bank accounts are fraudulent, and lead to the dire consequences so graphically depicted by appellants.

Funds acquired by recipients through personal injury claims or actions are subject to a lien for the amount of assistance funds disbursed *subsequent* to the injury, but prior to recovery of compensation. Even then, however, there is deducted from the amount of the lien (and thus released to the recipient) a sum equal to the recipient's living expenses for two years. In addition, all future medical bills are paid by the Department of Social Services (Ginsberg deposition, p. 31). Thus, if the injury is minor, the recipient may return to work, and his earnings are exempt. If the injury is major, the amount of the State's recovery will be a relatively small portion of the total.

Windfalls such as inheritances or lottery winnings must be assigned when received, as a condition to *continued* public assistance (Ginsberg deposition, p. 10).* Insurance proceeds are subject to recovery only if the recipient has named his estate as beneficiary, or has named no beneficiary. See N. Y. Social Services Law, § 105. Assets in a recipient's estate are also subject to recovery, except for the portion covered by the widow's and minor children's exemptions under the Estates, Powers and Trusts Law (§ 5-3.1). It must be repeated, however, that insurance or estate assets acquired by earnings from employment after the cessation of public assistance payments are not subject to reimbursement. Real estate will be covered by a mortgage. However, such a mortgage cannot be enforced if minor children might be adversely affected. N. Y. Social Services Law, § 360.

In any event, refusal by an applicant to assign assets to the State does not necessarily bar him from financial assistance. Factors such as the ability of the person to understand the consequences of his refusal; the applicant's

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* Contrary to appellants' assertion (Juris. Statement, p. 5), there is a consistent policy of setting aside money to be used for the future education of the recipient's children (Ginsberg deposition, p. 28).

health; the welfare of minor children; and the value of the assets involved, are all taken into consideration (Felder deposition, p. 7).

Shortly after appellants commenced this action, a three-judge District Court was convened, depositions were taken, and the case was submitted to the Court on agreed facts. Judges Frankel and Metzner voted to dismiss the complaint, while Judge Kaufman dissented. The majority opinion held* that the recovery provisions served a valid state purpose.

No Substantial Federal Question is Presented Requiring Full Hearing Before This Court

I. The challenged recovery provisions do not violate the supremacy chause, since they do not conflict with the Federal Social Security Act, and indeed, are at least implicitly authorized by Federal law.

Appellants argue (Juris. Statement, pp. 7-9) that the recovery provisions of the New York Social Services Law (§§ 104, 104a, 105 and 360), and the regulations of the New York State Department of Social Services adopted pursuant to the New York statutes, conflict with the Federal Social Security Act (42 U.S.C. §§ 601 *et seq.* and §§ 1351 *et seq.*), and are therefore invalid. The contention is plainly without arguable merit. Far from presenting a conflict, New York's statutes are at least implicitly authorized by the Federal statutes, which provide that if the states do receive reimbursement of public assistance monies (portions of which were provided by the Federal Government in the first instance), the United States must

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* The Court initially dismissed the contention that this was a class action [Juris. Statement, p. 26]. The dissenting judge did not dissent from such disposition and no point is made of this by appellants upon the appeal.

receive its pro rata share of such reimbursement (42 U.S.C. §§ 303, 603, 1203 and 1353).*

The thrust of appellants' argument is to distort the general policy of the Federal (and indeed the State) legislation, which aims toward the objective of eventual rehabilitation and the motivation of the recipient to that end, by narrowing its applicability to the recovery provisions, which are an incidental, though legitimate aspect of the legislation. The Federal legislation does not establish a policy with respect to the advisability or wisdom of reimbursement by public assistance recipients with assets. No flight of imagination can read into the Social Security Act any right to be insulated from repayment out of windfalls. Appellants simply advance vague allegations and theories concerning an alleged deleterious effect on motivation resulting from the obligation to repay out of *presently held* (or *presently assignable*) resources. But obviously there cannot be any effect on motivation, when the recovery provisions have no application to earnings, or to assets acquired from future earnings (Wyman deposition, p. 25; Ginsberg deposition, pp. 26, 31). Moreover, motivation is an individual matter, and it is arguable that some public assistance recipients might feel a greater sense of dignity and self-respect because they consider such payments as a loan which they will repay if they are possessed of assets, rather than as a "dole" or as charity (Wyman deposition, pp. 15-16).

There is no analogy between the instant case and that of *Thompson* v. *Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), prob, juris. noted sub nom. *Shapiro* v. *Thompson,* 389 U. S. 1032, returned to calendar for reargument [36 U.S.L.W. 3345 (June 17, 1968)] where a state policy re-

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* In this connection it should be pointed out that the dissenting judge found no conflict with federal law. Indeed, he expressed several times his agreement that New York has the authority to require reimbursement (App. B., pp. 44, 46-47).

quiring prior residence was held to violate the established federal right to travel, as clearly defined in *Edwards* v. *California,* 314 U. S. 160 (1941). The legislative history cited by appellants (juris. statement, p. 8) does not aid their arguments, since it is merely indicated therein that Congress contemplated fraud situations as an example of the instances in which recovery might be appropriate. Nor do cases such as *City of Worcester* v. *Quinn,* 304 Mass. 276, 23 N. E. 2d 463 (1939); *Charlestown* v. *Hubbard,* 9 N. H. 195 (1938); *City of Albany* v. *McNamara,* 117 N. Y. 168 (1889); and *Guardians of Pontypridd Union* v. *Drew,* 1 K. B. 214 (1927), holding that there is no common-law right to reimbursement of public assistance monies, aid the appellants. We are dealing here with a *statute* providing for such reimbursement, and appellants' argument should be addressed thereto. Moreover, the cases dealing with the lack of common-law right to reimbursement at least imply that a statute providing therefor would be valid. See e.g., *Guardians of Pontnypridd Union* v. *Drew, supra,* 1 K. B. 214, 216-217 (1927).

The recovery provisions are simply a means of ensuring that public assistance funds are disbursed only to those in need. This is a proper area for State regulation, consistent with the Federal statutes. See *King* v. *Smith,* 36 U.S.L.W. 4703, 4706 (decided June 17, 1968), where this Court said:

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need * * *."

II. New York's recovery provisions do not violate the Fourteenth Amendment's guarantee of equal protection of the laws.

Appellants' argument that New York's recovery provisions violate the equal protection clause is totally without

merit. To succeed in their argument, appellants must demonstrate either (1) that the operation of these laws differs among members of the class defined by the Legislature, or (2) that the classifications drawn are unreasonable in the light of their purpose. Further, the legislation will not be measured against the standards of appellants' personal opinions. The classifications are valid if they are practical, and they are not reviewable unless palpably arbitrary. The test is whether the classifications are rational. *Morey* v. *Doud*, 354 U. S. 457, 463-4 (1957).

Viewed in the light of these fundamental principles, appellants' arguments are untenable. They begin (juris. statement, pp. 9-10) by condemning the "singling out" of welfare recipients for the imposition of reimbursement obligations, as opposed to the "gratis" distribution of public largesse to others by way of oil depletion allowances, etc. However, this argument is really addressed to the wisdom of the challenged legislative action, not to the basis for the equal protection challenge.

Similarly, the argument that "Medicaid" (N. Y. Social Services Law §§ 363 *et seq.*), recipients are treated differently fails to reach the underlying basis for the classification. "Medicaid" is essentially a device for preventing a specific type of expense (i.e., medical), from becoming so catastrophic in its effect that it renders a family destitute. Welfare payments, on the other hand, provide subsistence to persons who are already destitute, for all practical purposes (Wyman deposition, pp. 23-24; Ginsberg deposition, p. 16). To state the classification is to demonstrate its reasonable basis.

Finally, appellants profess to see an "arbitrary" classification in the exemption of claims for workmen's compensation and volunteer firemen's benefits from the recovery provisions relating to personal injury claims (N. Y. Social Welfare Law § 104). Here too, however, New York's Leg-

islature has acted reasonably.* Workmen's compensation claims are exempt from execution for debt (N. Y. Workmen's Compensation Law § 33), while no such exemption applies to personal injury claims generally. Further, workmen's compensation payments are small and periodical in nature, and do not include compensation for pain and suffering (as is often the case with personal injury claims). Volunteer firemen's benefits are designed to encourage public service rendered without pay. See *Bauman* v. *Town of Irondequoit,* 204 Misc. 494 (Sup. Ct. 1953), affd. 282 App. Div. 916, affd. 307 N. Y. 926 (1954).

Appellants cite *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 N. W. 2d 4 (1957), and *Department of Mental Hygiene* v. *Kirchner,* 60 Cal. 2d 716, 388 P. 2d 720 (1964), remanded for further proceedings 380 U. S. 194 (1964), reiterated on state constitutional grounds 62 Cal. 2d 586, 400 P. 2d 321, as "applying the equal protection principle in welfare situations." Neither of these cases has any application to this case. In *Kirchner,* the court dealt with recovery from relatives of the expense of maintaining an involuntarily committed mental patient. Here, we are dealing with a reasonable condition imposed directly upon the voluntary recipient of public assistance. In *Collins,* the court found that the Iowa legislature had discriminated within a class by placing a specific monetary limit on aid without regard to need. Here, it is apparent that the Legislature has achieved equality within the class of public assistance recipients by ensuring that welfare payments will be made only to those in need.

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* The Legislature has also exempted workmen's compensation claims from the statutory lien imposed upon personal injury claims, in favor of charitable and municipal hospitals. N. Y. Lien Law, § 189, subd. 6.

III. The recovery provisions do not violate the due process clause of the Fourteenth Amendment.

In a final attempt to create a constitutional issue out of their disagreement with New York's Legislature, appellants claim that the recovery provisions unreasonably deprive them of property in the traditional sense (by requiring assignments); deprive "recipients who are deterred from applying"* (sic) of property rights in the cash benefits themselves; and deprive recipients of the freedom "to become independent and self-supporting." This due process contention, too, is plainly frivolous. Appellants cannot seriously contend that the State is powerless to take into consideration the resources specified in the Act, acquired by recipients while obtaining welfare benefits. Actually, appellants epitomize their entire argument in this case by stating that "the assets assigned could be put to better use." Appellants' grievance is plainly misdirected. The judgment as to the wisdom of the recovery provisions is for the Legislature. It may be, as the dissenting judge pointed out, that the recovery provisions are "inelegant" (App. B, p. 45). But, as the majority opinion said (App. B, p. 29):

> "The plain flaw that none the less destroys plaintiffs' thesis is that it is brought to the wrong forum."

The legislative determination certainly meets the constitutional test of at least "minimal rationality," see *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 488 (1955); *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, 47-48 (1966), and appellants' arguments do not present a substantial constitutional issue.

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* Who are neither named nor joined as parties to this action.

CONCLUSION

For the foregoing reasons, the within motion to dismiss or affirm should be granted.

Dated: New York, New York, July 24, 1968.

Respectfully submitted,

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